

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Joe L. Williams,	)	C/A No. 9:10-00756-RBH-BM
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Major J. Shaw;	)	Report and Recommendation
Mr. NFN Monteith, 3 <sup>rd</sup> Judicial Circuit for South Carolina,	)	
	)	
Defendants.	)	

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The Plaintiff, Joe L. Williams, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983. Plaintiff is a detainee at the Williamsburg County Detention Center, and files this action *in forma pauperis* under 28 U.S.C. § 1915. The complaint names two police officers employed by the Kingstree City Police Department as Defendants.<sup>1</sup>

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint pursuant to the procedural provisions of 28 U.S.C. § 1915; 28 U.S.C. § 1915A; the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996); and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4<sup>th</sup> Cir. 1995) (*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4<sup>th</sup> Cir. 1983).

As the Plaintiff is a *pro se* litigant, his pleadings are accorded liberal construction. *Erickson v. Pardus*, 551 U.S. 89 (2007); *Estelle v. Gamble*, 429 U.S. 97 (1976). Even when considered under this less stringent standard, however, the *pro se* complaint is still subject to summary

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<sup>1</sup> Title 28 U.S.C. § 1915A (a) requires review of a “complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.”



dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F. 2d 387 (4th Cir. 1990).

### Background

Plaintiff's complaint, which alleges entrapment by police officers, states the following facts, verbatim:

Major J. Shaw and Mr. Monteith of the Kingstree City Police sat back and watch me comit [sic] a crime! When they saw me comit [sic] this crime, they should of come and stop me in the first place. If they would of done their job I would only be charge with trespassing instead of Burglary 2<sup>nd</sup>. The law is so crooked here in Williamsburg County. Please see that something is done with my case.

### Discussion

Plaintiff's complaint asks this Court to intervene in his state criminal action. However, in *Younger v. Harris*, the Supreme Court held that a federal court should not equitably interfere with state criminal proceedings except in the most narrow and extraordinary of circumstances. *Younger v. Harris*, 401 U.S. 37, 43-44 (1971)(courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief); *Gilliam v. Foster*, 75 F.3d 881, 903 (4<sup>th</sup> Cir. 1996). From *Younger* and its progeny, the Court of Appeals for the Fourth Circuit has culled the following test to determine when abstention is appropriate: "(1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal claims in the state proceedings." *Martin Marietta Corp. v. Maryland Comm'n on Human Relations*, 38 F.3d 1392, 1396 (4<sup>th</sup> Cir. 1994) (citing *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)).



Plaintiff's complaint states that he is currently detained and charged with the criminal offense of Burglary, Second Degree. As an ongoing state criminal proceeding exists, the first abstention prong is satisfied. The second criteria, implication of important state interests, is also satisfied since South Carolina's administration of its criminal justice system "free from federal interference is one of the most powerful considerations that should influence a court considering equitable types of relief." *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). Regarding the third "adequate opportunity" criteria, the Supreme Court has noted "that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights." *Gilliam v. Foster*, 75 F.3d at 904(quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)).

In the instant action, Plaintiff will have sufficient opportunity, during his state criminal proceedings, to present an entrapment defense and/or raise his concerns regarding the Defendants' actions. Therefore, this Court should abstain from equitably interfering in Plaintiff's state criminal case.

#### Recommendation

Accordingly, it is recommended that the Court dismiss the complaint in the above-captioned case *without prejudice* and without issuance and service of process. Plaintiff's attention is directed to the important notice on the next page.



April 2, 2010  
Charleston, South Carolina

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Bristow Marchant  
United States Magistrate Judge



### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).